

CARMEL BOARD OF ZONING APPEALS RULES OF PROCEDURE

Revised as of October 27, 2008

WHEREAS, by authority granted this Board pursuant to I.C. 36-7-4-916(a) *et seq.*, the Carmel Board of Zoning Appeals (hereinafter called the "BZA") does hereby adopt the following rules of procedure in the administration and conduct of its duties:

Article I.	<u>Power and Duties.</u>
Article II.	<u>Election of Officers and Appointment of Employees.</u>
Article III.	<u>Meetings.</u>
Article IV.	<u>Agendas.</u>
Article V.	<u>Appeals.</u>
Article VI.	<u>Hearings and Notice.</u>
Article VII.	<u>Conduct of Hearings.</u>
Article VIII.	<u>Final Disposition of Cases.</u>
Article IX.	<u>Hearing Officers.</u>
Article X.	<u>Suspension and Amendments.</u>

Article I. Power and Duties.

Section 1. The BZA shall function within the parameters of I.C. 36-7-4-916 *et seq.*, as amended, and as further provided by City Ordinance.

Section 2. All meetings of the BZA shall comply with the Open Door or Sunshine Act and any amendments thereto (I.C. 5-14-1.5-1 *et seq.*).

Article II. Election of Officers and Appointment of Employees.

Section 1. At its first regular meeting of each year, the BZA shall elect from its members a Chairperson and Vice-Chairperson. The Vice-Chairperson shall have authority to act as Chairperson during the absence or disability of the Chairperson. The Chairperson and Vice-Chairperson shall serve until their respective successors are elected. In the event both the Chairperson and the Vice-Chairperson are absent from a regularly scheduled meeting, a temporary Chairperson shall be elected from the membership to Chair that meeting.

Section 2. The Chairperson shall preside at all meetings of the BZA. Except as otherwise authorized by a resolution of the BZA, the Chairperson shall sign all contracts, claims against the BZA budget and other instruments made by the BZA. At each meeting, the Chairperson shall submit such recommendations and information as he or she may deem proper concerning the business, affairs and policies of the BZA. The Chairperson shall moderate all matters before the BZA following a fair, unbiased and impartial policy. The Chairperson, subject to these rules, shall decide all points of order or procedure, unless otherwise directed by a majority of the BZA present. The Chairperson shall appoint any committee that may be found necessary by the BZA in order to undertake the duties of the BZA.

Section 3. The BZA may appoint and prescribe the duties of a Secretary and such other employees as are necessary for the discharge of its duties, and within its budget, fix their compensation.

Section 4. All ministerial duties of the BZA not otherwise delegated may be delegated to the Director of the Department of Community Services or his/her authorized representatives, who are referred to generally in these rules as the "Administrator".

Article III. Meetings.

Section 1. The regular meetings of the BZA shall be held on the 4th Monday of each month at 6:00 p.m. in the City of Carmel City Hall at One Civic Square, Carmel, or at such other location timely designated by the Chairperson. If the 4th Monday of the month falls on a legal holiday, the BZA shall set a substitute meeting date at the preceding regular meeting.

Section 2. Special meetings of the BZA may be called by the Chairperson, by any two (2) members upon written request to the Secretary, or as determined at a regular meeting. All members shall be notified of special meetings by the Secretary unless otherwise so notified at a regular meeting.

Section 3. A majority of the members of the BZA shall constitute a quorum. No action is official, unless authorized by a majority of the BZA at a regular or properly called special meeting.

Section 4. The BZA shall keep minutes of its proceedings. In addition to stating the date, time, and place of each meeting and reflecting the business conducted, the minutes shall also show the names of all BZA members and supportive staff present, indicating the late arrival or early departure of these personnel. Minutes shall include the vote of each member present and voting on every question, whether or not a final decision is rendered. Should any member(s) be disqualified from participating and voting on any application or otherwise unable to participate with the BZA, an alternate member may be appointed by the appointing body to fulfill the duties of the disqualified member. The minutes of each meeting shall be approved (or amended and approved) at the next regular meeting. The approved minutes shall become official when signed by the presiding officer and attested to by the Secretary. Copies of the minutes of the previous meeting shall be submitted to BZA members prior to the next regular meeting.

Section 5. The BZA may tape record the proceedings of each meeting to substantiate and clarify the official minutes.

Section 6. The BZA shall keep in its records all material relevant to each agenda item, including, but not limited to required documents from the petitioner as part of the application; any data or evidence presented by either the petitioner and his or her supporters or by remonstrators at the public hearing; completed ballot forms; and any correspondence received by the BZA pertinent to the item. All records shall be kept in the BZA's office and shall be a matter of public record, open for inspection during business hours.

Section 7. All meetings shall terminate automatically if a quorum is not present. Should a meeting last past 11:00 p.m., the agenda item then being heard shall be concluded, and the question shall then be put to the members as to whether to take up any further business or to recess the meeting to a time unanimously agreed upon for the purpose of completing that agenda. A majority of the quorum present shall decide the issue, a tie vote being considered a vote to recess. A recessed meeting shall not be considered a special meeting, although the Secretary shall be required to notify any members who were not in attendance at the regular meeting of the date, time and place of such recess.

Section 8. Unless otherwise provided for in these Rules of Procedure, all meetings shall be conducted according to Robert's Rules of Order, as revised.

Article IV. Agendas.

Section 1. The Administrator shall review any application to be placed on the BZA's agenda for technical and legal compliance with the terms on the Zoning Ordinance before entering it on the BZA's agenda. In placing any item on a given agenda, care shall be taken that the petitioner has sufficient time to comply with the notification requirements for advertising and legal notice to interested parties.

Section 2. All items appearing on the BZA's agenda for the first time shall be assigned a docket number by

the BZA or its delegate who shall also set a date, time and place for any required public hearing. Each item shall be numbered individually and consecutively in the order in which the applications are placed on the agenda. The docket numbers shall begin anew on January 1st of each year and shall include the assigned number, the year, and the appropriate letter identifying the type of case to be heard. These identifying letters shall be:

A	=	Appeal of a decision or determination of the Director of the Department of Community Services
CA	=	Commitment Amendment
I	=	Appeal of an Interpretation of the Official Zoning Map
N	=	Appeal of Nonconforming Use Determination
SE	=	Special Exception
SU	=	Special Use
V	=	Development Standards Variance
UV	=	Use Variance
R	=	Revocation of Approval

Section 3. Any application to the BZA which involves land usage in any way shall be sent to the Technical Advisory Committee (TAC) for its review and recommendations prior to being heard by the BZA.

Section 4. Petitions not initiated by the BZA itself shall be accompanied by a non-refundable filing fee as established by Ordinance.

Section 5. When amending the previous section (*Article IV, Section 4* dealing with Filing Fees), the BZA shall publish a public notice as required by *Article VI* of these Rules of Procedure.

Section 6. The order of business on the agenda for each regular meeting shall be:

- A. Call to Order
- B. Pledge of Allegiance
- C. Swearing in of Members (when applicable)
- D. Roll Call
- E. Declaration of a Quorum
- F. Approval of Minutes of Previous Meeting(s)
- G. Election of Officers (when applicable)
- H. Communications, Bills and Expenditures
- I. Reports, Announcements and Staff Concerns
- J. Public Hearings
- K. Old Business
- L. New Business
- M. Adjournment

Section 7. All items on the agenda for each meeting shall appear, under the proper heading, in the order of their assigned docket numbers unless otherwise ordered by the BZA.

Section 8. Copies of the agenda and support documentation for the items appearing at the regular meeting shall be submitted to the BZA members no less than seven days prior to the meeting. If support information on a particular item is not received by the Board seven days prior, the item will be tabled until the next regularly scheduled meeting. Deletions, but not additions, to the agenda may be submitted to the BZA at a regularly scheduled meeting. The agenda for a special meeting may be submitted at the time of the special meeting, but shall include only the item or items for which the meeting was specifically called.

Article V. Appeals.

Section 1. An appeal from any order, requirement, decision or determination made by an administrative official or board charged with the enforcement of any zoning ordinance shall be filed with the BZA.

Section 2. (a) The appeal shall be filed with the BZA within thirty (30) days of the decision of the enforcing official or board that is being contested. In those cases where the thirtieth day falls on a Saturday, a Sunday, a legal holiday, or a day on which the office of the BZA is closed, the filing deadline shall be extended to the end of the next business day.

(b) The appeal shall be filed in duplicate on a form provided by the BZA and shall specify the grounds thereof in such a manner as to fully inform the BZA of all facts and elements involved, including a clear statement of the reason(s) why the petitioner deems the appeal to be justified. Any communication purporting to be an appeal or petition shall be regarded as a mere notice of intention to seek relief and shall be of no force or effect until made in the form required.

(c) When appropriate, the petitioner shall provide the BZA with copies of any documents supporting his or her case.

(d) The Administrator shall review the application and place it on the BZA's agenda when it is in technical and legal compliance.

Section 3. Following placement on the agenda, the BZA or its delegate shall assign a docket number and fix a date, time and place for the public hearing. The Administrator shall so notify the petitioner.

Section 4. The administrative official or board from whom the appeal is taken shall, upon request of the BZA, transmit to it all documents, plans, papers, etc., leading to the decision being appealed.

Section 5. When an appeal has been filed with the BZA, proceedings on the premises affected shall be stayed unless the official or board certifies to the BZA that a stay would cause imminent peril to life or property. In that case proceedings may only be stayed by a restraining order. The BZA may issue a restraining order after application, notice to the officer or board and to the owner of the premises affected, and upon due cause shown. The official or board charged with the enforcement of the ordinance may call upon the police power of the City or Township to give effect to that order.

Article VI. Hearings and Notice.

Section 1. Subject to the provisions of I.C. 36-7-4-920 *et seq.*, public hearings shall be held on all appeals from decisions of the administrative official or board charged with enforcement of the zoning ordinances, or before the BZA considers whether to revoke any approval previously granted by the BZA.

Section 2. Subject to the provisions of the zoning ordinances of the City of Carmel and Clay Township, Indiana, public hearings shall be held on any variance, special exception, or special use applications.

Section 3. (a) In appeals and applications for commitment amendments, variances, special exceptions, and special uses to be heard by the BZA, a legal notice of the public hearing shall be prepared by the petitioner and advertised in a daily newspaper of general circulation in the County, not less than twenty-five (25) days prior to the hearing, not including the date of the hearing itself.

(b) In applications for development standards variances to be heard by a BZA Hearing Officer under *Article IX* of these Rules of Procedure, a legal notice of the public hearing shall be prepared by the petitioner and advertised in a daily newspaper of general circulation in the County, not less than ten (10) days prior to the hearing, not including the date of the hearing itself.

(c) For purposes of consideration, a daily newspaper of general circulation in the county, in accordance with the Indiana Code, would be the Indianapolis Star. The petitioner shall assume the cost of said notice and two (2) copies of an affidavit from the publisher shall be submitted to the Administrator prior to the public hearing.

Section 4. The petitioner is encouraged to use the standard "Public Notice" form available from the Administrator.

Section 5. The petitioner shall also serve notice to owners of property adjoining and abutting the affected area, including property across a public right-of-way. Such notification may be by certified mail with return receipts requested, or may be hand delivered if signed receipts are obtained. Notification must be sent or hand delivered not less than twenty-five (25) days (or ten (10) days, for applications to be heard by a BZA Hearing Officer) prior to the hearing and must include the location and nature of the subject petitioned or appealed, and give the date, time, and place for the public hearing. The petitioner shall be responsible for obtaining a certified list of the names and current addresses of the owners of such adjoining and abutting property owners from the records on file in the office of the Hamilton County Auditor in Noblesville, Indiana, and shall provide the Administrator with two (2) copies of this list certified by the Auditor against which to check the signed receipts of the notice.

Whenever any adjoining or abutting property lies across the county line, then the petitioner shall be responsible for obtaining a certified list of the names and current addresses of such adjoining and abutting property owners from the records on file in the office of the Boone County Auditor or Marion County Auditor, as the case may be, and shall provide the Administrator with two (2) copies of this list certified by that Auditor against which to check the signed receipts of the notice.

Section 6. The petitioner shall also serve notice to the general public by placing a sign per the approval of the Administrator (size and placement) on site of the petition. The sign shall be placed no less than twenty-five (25) days (or ten (10) days, for applications to be heard by a BZA Hearing Officer) prior to the public hearing and removed no more than three days after.

Section 7. (a) Regarding any agenda item pending before it, the Administrator may request, or the BZA in its discretion may direct, the attorneys for the petitioner and all interested parties to meet with the Administrator for a pre-hearing conference to consider:

- (1) the simplification of the issues;
 - (2) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof;
 - (3) a limitation of the number of expert witnesses;
 - (4) an exchange of names and witnesses to be called during the hearing and the general nature of their expected testimony;
 - (5) the desirability of using one or more types of alternative dispute resolution before the hearing is held; and
 - (6) such other matters as may expedite the disposition of the agenda item.
- (b) The Administrator shall give at least ten (10) days notice of the pre-hearing conference unless otherwise directed by the BZA. At least one (1) attorney planning to take part in the hearing shall appear for each of the parties and participate in the conference.
- (c) Each attorney shall completely familiarize himself or herself with all aspects of the pending item in advance of the conference and be prepared to enter into stipulations with reference to as many facts and issues and exhibits as possible.
- (d) If necessary or advisable, the Administrator may adjourn the pre-hearing conference from time to time or may order an addition pre-hearing conference.

- (e) If, following the pre-hearing conference or during the hearing, counsel discovers additional exhibits or the names of additional witnesses, the same information required to be disclosed at the conference shall be immediately furnished opposing council. The original of any such disclosure shall immediately be filed with the Administrator and shall indicate the date it was furnished opposing counsel.

Article VII. Conduct of Hearings.

Section 1. A public hearing that has been legally advertised and noticed to be held at a given meeting may start later than the stated time if prior items on the agenda are running late, but in no case may it start earlier than the advertised time.

Section 2. No member of the BZA shall participate in the hearing and determination of a zoning matter in which he or she has a direct or indirect financial interest. Any disqualification of a member shall be included in the minutes, and an alternate member may be appointed to participate as a member concerning that particular item.

Section 3. All members present at a given meeting shall vote on all questions before the BZA unless they are disqualified from participating by state law. No abstentions from voting shall be allowed.

Section 4. If proof of proper legal notice and/or notice to adjoining and abutting property owners is not presented to the Administrator by the petitioner prior to the public hearing, not counting the hearing date itself, the petition shall be tabled and rescheduled for the next regular meeting. Public announcement of this change at the originally scheduled meeting shall be deemed sufficient notice to all parties. Should a question concerning defect in notice be raised, it must be raised prior to the start of the hearing, although personal appearance by such an owner shall waive the defect.

Section 5. The petitioner, petitioner's attorney or their representative with proper power of attorney must be present in order for a public hearing to be held as scheduled. However, written appearances by those augmenting the presentation, as well as by those either supporting or remonstrating against it will be accepted prior to or during the public hearing. Failure of the petitioner or their representative to appear will result in the petition being tabled and rescheduled for the next meeting, unless those remonstrating against it object to the tabling, in which case the BZA may vote to dismiss the petition for lack of prosecution. Public announcement of this change or dismissal at the originally scheduled meeting will be deemed sufficient notice to all parties.

- Section 6.
- (a) If only a majority (3 out of 5 members) of the BZA are available to hear any agenda item, thereby requiring that the petitioner receive an affirmative vote from all members present in order to prevail, the petitioner may request that the BZA table his or her agenda item once, with the reasonable expectation that more members will be available at the next meeting. In order to exercise this option, however, he or she must request the tabling prior to the start of the hearing of that agenda item, by informing the Chairperson.
 - (b) If the petitioner wishes to request a tabling for any other reason, he or she shall inform the Administrator not less than five days prior to the meeting. However, the BZA shall grant a petitioner only one tabling under this paragraph (b), unless the petitioner agrees to provide new notices of the public hearing as required by Article VI of these Rules of Procedure.
 - (c) This section does not prohibit a petitioner from withdrawing his or her agenda item less than five days prior to the meeting at which it is to be heard. However, any item so withdrawn must then be re-filed with the BZA, and the petitioner must provide new notices of the public hearing as required by Article VI of these Rules of Procedure.
 - (d) Whenever the BZA grants a one-time tabling under paragraph (a) or (b), public announcement of the change of hearing date at the originally scheduled meeting will be deemed sufficient notice to all parties.

- Section 7. (a) The BZA, at its own discretion, may continue or postpone the hearing of any agenda item upon the affirmative vote of a majority of the members present. Such a continuance or postponement will not be considered a tabling requested or otherwise caused by the petitioner.
- (b) Whenever the BZA continues or postpones the hearing of an agenda item under paragraph (a), public announcement of the continuance or change of hearing date at the originally scheduled meeting will be deemed sufficient notice to all parties.

Section 8. During a hearing, the petitioner may offer oral amendments to their petition, all of which must be made a part of any motion to approve and so indicated on the official Findings of Fact attested to by the Secretary. The petitioner and/or their representative shall be required to sign the official Findings of Fact to indicate their willingness to comply with any oral amendments. However, should the BZA determine that any proposed amendments are material or substantial enough to warrant further review by the Administrator or an additional public hearing before final action is taken, the petitioner shall be required to table his or her petition and submit a written amended petition.

Section 9. Once a motion to approve a petition has been made and seconded, members may further discuss the petition. Once members have been asked to vote by filling out their ballots, no further discussion, tabling or amending of the petition will be allowed, and a vote may be taken only on the application as presented. Should any facts brought out in a BZA meeting or hearing indicate that more terms of any zoning ordinance are being varied than were actually applied for, procedures followed before the BZA can take action on that aspect of a proposal.

Section 10. If a petition is tabled as a result of rules 4, 5, 6, 7, 8 or 9 of this Article, the petitioner must take affirmative action on the petition in time to be heard at the next regularly scheduled meeting of the BZA. If no such action has been taken, the BZA may vote to dismiss the petition for lack of prosecution. Affirmative action shall include withdrawing the petition, proceeding with the petition as originally filed, or amending the petition and presenting it as amended.

Section 11. If a petition has been tabled for any reason and at any point prior to taking a vote, the petitioner shall have the right to file one (1) amended petition. All such amendments must be in written form and must be submitted for review by the Administrator, prior to the next meeting. It shall be left to the discretion of the Administrator as to whether or not the nature of the amendment(s) indicate that the petitioner should take necessary steps to re-notice their application or be required to submit his or her amended petition to the Technical Advisory Committee (TAC) for its review and recommendations prior to appearing before the BZA. Payment of any fees associated with the amendment procedure shall be as set forth in Article IV, Section 4 of these Rules. In all cases when an amended petition is presented to the BZA, the public hearing shall be reopened.

Section 12. Orderly conduct shall be required of every person appearing before the BZA or attending a BZA meeting. All persons shall abide by these rules and the direction of the Chairperson. Discourteous, disorderly or contemptuous conduct shall be regarded as a breach of the privileges of the BZA and shall be dealt with as the BZA or the Chairperson directs. All persons recognized by the Chair shall rise and identify themselves by name and address before addressing the BZA.

Section 13. The procedure to be followed for the holding of a public hearing shall be as follows:

- (1) The Chairperson shall officially open the public hearing. During the hearing, the Chairperson may limit the length of time all persons may speak or request that repetitious statements by different speakers be avoided in order to reasonably limit the length of the hearing.
- (2) The petitioner shall make his or her presentation (15 minutes), with the burden of providing all necessary information for a clear understanding of the application falling

upon him or her.

- (3) Statements and/or letters from the public in support of the project will be heard (5 minutes).
- (4) Statements and/or letters from the public in remonstrance against the project will be heard (15 minutes).
- (5) The petitioner may make a brief rebuttal to any public remonstrance (5 minutes).
- (6) To maintain orderly procedure, each side should proceed without interruption by the other side.
- (7) Following public remonstrance and petitioner rebuttal, the Technical Advisory Committee reports or Administrator recommendations concerning the application will be heard.
- (8) The BZA members shall have an opportunity to question the petitioner concerning the application. As deemed necessary, members may also ask for clarification of points made by the public or may request a legal opinion from the BZA's counsel regarding any aspect of the petition.
- (9) The Chairperson shall ask if the BZA is ready to proceed to a vote and close the public hearing.
- (10) A member of the BZA may make an appropriate motion for disposition of the case, which must then be seconded by another member. Any conditions to the approval of an application must be so stated in the motion.
- (11) Further discussion may be called for by the BZA. Any amendments to the motion itself must be made, seconded, discussed and voted on, and the question shall then be put to the BZA.

Article VIII. Final Disposition of Cases.

Section 1. All decisions of the BZA, on matters heard in public hearings shall be by record vote. The chairperson shall publicly announce the decisions of the BZA for purposes of recording in the minutes. The vote of each member shall be a matter of permanent record.

Section 2. Voting shall be by written ballots. Ballots shall be filled out by all voting members on each issue before the BZA except internal BZA procedural issues (electing officers, hiring employees, adopting Rules, etc.) or in such a case as the BZA concludes that ballots are unnecessary or inappropriate.

Section 3. A majority of the entire membership of the BZA must approve the petition. The BZA may adopt written findings of fact as submitted by the petitioner or by any interested party, with or without modifications, specifications, or limitations, or the BZA may delegate to its counsel and/or the Administrator the authority to prepare written findings. The BZA's written findings shall be executed by the chairperson and secretary of the BZA and filed in the office of the BZA within 45 days after the date of the BZA's decision.

Section 4. In the event that a vote on an application before the BZA results in a tie vote or does not receive the necessary majority vote to decide the issue, a "no decision vote" will be declared. The petition shall immediately be scheduled for rehearing at the subsequent month's meeting. When the petition is heard at the subsequent month's meeting, the petitioner may make a brief recapitulation of their previous presentation and may elect to amend it or to present additional evidence in support of it. Any public hearing which was held when the application was originally presented shall be reopened to remonstrance or to address any proposed amendments or any new evidence which has been introduced.

Section 5. The final disposition of any appeal before the BZA shall be in the form of a decision either reversing or modifying the requirement, order, decision, or determination appealed from or affirming the requirement, order, decision, or determination and denying the appeal. The BZA may adopt written findings of fact as submitted by the petitioner, by the respondent, or by any interested party, with or without modifications, specifications, or limitations, or the BZA may delegate to its counsel the authority to prepare written findings. The BZA's written findings shall be executed by the chairperson and secretary of the BZA and filed in the office of the BZA within 45 days after the date of the BZA's decision. The BZA may dismiss an appeal for lack of jurisdiction.

Section 6. An application which has been withdrawn by the petitioner or dismissed by the BZA for lack of prosecution shall not be placed on the agenda for consideration within a period of three (3) months following the date of withdrawal or dismissal from the agenda of the BZA.

Section 7. A development standards variance application which has been decided adversely to the petitioner shall not be placed again on the BZA's agenda for consideration until the legality of the BZA's decision is finally determined pursuant to IC 36-7-4-1000 *et seq.*, or for a period of six (6) months following the date of the adverse decision issued by the BZA, whichever is later.

Section 8. Any action which results in a determination by the BZA that it lacks jurisdiction over any application before it shall not be considered an adverse decision against the petitioner as defined in Section 7 of this Article. Following a decision that it lacks jurisdiction, the BZA may vote to refund filing fees.

Article IX. Hearing Officers.

Section 1. Pursuant to the alternate procedure authorized by *Section 30.8* of the Carmel Clay Zoning Ordinance, regular hearings shall be conducted by a BZA Hearing Officer on the 1st and 2nd Thursday of each month at 1:00 p.m. in the City of Carmel City Hall at One Civic Square, Carmel, or at such other location timely designated by the Chairperson of the BZA. However, no hearings shall be conducted on any legal holiday.

Section 2. Any BZA Hearing Officer has the power of the BZA to approve or deny a variance from the development standards of the Zoning Ordinance, or a special use or a special exception, after a public hearing conducted in accordance with these rules. A Hearing Officer shall make a decision on any application that he or she hears, at the conclusion of the hearing (including any continuance or postponement thereof) on that application. Within five (5) days after making any decision, the Hearing Officer shall file in the Office of the BZA a copy of his or her decision.

Section 3. Unless otherwise provided for in this Article IX, all hearings before a Hearing Officer shall be conducted, insofar as practicable, in accordance with Articles III, IV, VI, and VII of these rules. In particular, the minutes and records of all proceedings before a Hearing Officer shall be kept in accordance with Article III, Sections 4 through 6. If a petition before a Hearing Officer is tabled as a result of Article VII, Section 4, 5, 6, 8, or 9, the petitioner must take affirmative action on the petition in time to be heard at the next regularly scheduled meeting of the BZA, as provided in Article VII, Section 10.

Section 4. After the Administrator has reviewed and accepted any development standards variance, special use, or special exception application under Article IV, Section 1 of these rules, the Administrator may, pursuant to *Section 30.8* of the Carmel Clay Zoning Ordinance, place the application upon a Hearing Officer's agenda instead of placing the application upon the agenda for a regular meeting of the BZA. Copies of each application on a Hearing Officer's agenda shall also be submitted to all members of the BZA, no less than ten (10) days before the scheduled hearing date for that agenda. Any member of the BZA may then communicate with the Administrator if in the opinion of the member an application should be placed upon the agenda for a regular meeting of the BZA. The Administrator shall then remove such application from the Hearing Officer's agenda and place it on the agenda for the next regular meeting of the BZA.

Section 5. The Administrator may, not less than five (5) days before a hearing before a Hearing Officer, remove any application from the Hearing Officer's agenda if in the opinion of the Administrator:

- (1) the approval of the development standards variance, special use, or special exception may be found to be injurious to the public health, safety, morals, and general welfare of the community; or
- (2) the use or value of the area adjacent to the property included in the variance, use, or exception may be found to be affected in a substantially adverse manner.

If the Administrator removes an application from a Hearing Officer's agenda, the application shall be considered withdrawn, or shall be transferred to the agenda of the BZA if requested by the petitioner.

Section 6. The Administrator may, not less than five (5) days before a hearing before a Hearing Officer, indicate that the Administrator has no objection to the approval of a development standards variance, special use, or special exception by the Hearing Officer if specified conditions are attached to the approval. If the petitioner does not accept these conditions, the application shall be considered withdrawn, or shall be transferred to the agenda of the BZA if requested by the petitioner.

Section 7. Following the hearing of any application under the alternate procedure described in this Article IX, a Hearing Officer may impose conditions and may permit or require the owner of a parcel of property to make a written commitment concerning the use or development of that parcel, as provided in I.C. 36-7-4-921. If the petitioner fails to accept these conditions or fails to make the commitment, the application shall be considered withdrawn, or shall be transferred to the agenda of the BZA if requested by the petitioner. The Hearing Officer may not modify or terminate any commitment, whether made under the alternate procedure or pursuant to an approval by the BZA. Such a commitment may be modified only by the BZA itself.

Section 8. A decision of a Hearing Officer may not be a basis for judicial review, but it may be appealed to the BZA. The BZA shall conduct a new hearing on the matter and shall not be bound by any findings of fact made by the Hearing Officer. A person who wishes to appeal a decision of the Hearing Officer must file the appeal with the BZA within fourteen (14) days after the decision is made, as provided in I.C. 36-7-4-924.

Section 9. A Hearing Officer shall not have the right to suspend these rules.

Article X. Suspension and Amendments.

Section 1. The BZA shall have the right to suspend these rules or any portion thereof, except where otherwise controlled by State Statute or the City of Carmel and/or Clay Township Zoning Ordinances, at any meeting, upon the majority approval of all members present.

Section 2. The BZA shall have the right to amend these rules or any portion thereof at any regular or special meeting, provided that the amendments are approved by a majority of the BZA.

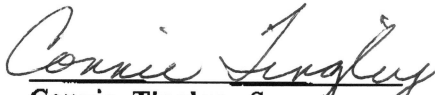
Section 3. Should a court of any Jurisdiction declare these rules to be in part null or void, such ruling shall not affect the remainder of these rules, and they shall stay in full force and effect as if the omitted portion did not exist.

WHEREFORE, the Rules of Procedure of the City of Carmel and Clay Township Board of Zoning Appeals, Clay Township, Hamilton County, Indiana, are approved by the Affirmative vote of all members of the BZA in attendance at the public meeting on October 27, 2008. These Rules of Procedure are to become effective immediately and their formal adoption and implementation shall be considered revocation of any prior Rules of Procedure and amendments thereto.

APPROVED BY:


James Hawkins, Chairperson

ATTEST:


Connie Tingley, Secretary

DATED: October 28, 2008